

NTSB Order No.

EM-161

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD

at its office in Washington, D.C.

on the 9th day of October, 1991

J. W. KIME, Commandant, United States Coast Guard,

v.

ANDREW C. SUBCLEFF, Respondent.

Docket ME-142

ORDER DISMISSING APPEAL

The Commandant has moved to dismiss the appeal filed in this proceeding on the ground that the appellant did not file his notice of appeal with the Board within 10 days after service of the Commandant's decision, as required by section 825.5(a) of the Board's rules of procedure.¹ See 49 CFR Part 825. Specifically, the motion asserts that although appellant's counsel was served with the decision on July 26, 1990, appellant's notice of appeal, due August 6, was not filed until August 15, some nine days late.¹ See 49 CFR Part 825. Specifically, the motion asserts that although appellant's counsel was served with the decision on July 26, 1990, appellant's notice of appeal, due August 6, was not filed until August 15, some nine days late.²

¹Section 825.5(a) provides as follows:

"§ 825.5 Notice of appeal.

(a) A party may appeal from the Commandant's decision sustaining an order of revocation, suspension, or denial of a license, certificate, document, or register in proceedings described in § 825.1 by filing a notice of appeal with the Board within 10 days after service of the Commandant's decision upon the party of his designated attorney. Upon good cause shown, the time for filing may be extended."

²It appears from the record that the notice was actually filed on August 13, 1990.

In opposition to the motion to dismiss, counsel for appellant contends, among other things, that the notice of appeal should be accepted out of time³ because he mistakenly assumed, until he discovered otherwise on August 13, that he had 30 days to appeal from the Commandant's decision, of which he was personally aware on August 8.⁴ We agree with the Commandant that counsel's unfounded error as to the time period for filing a notice of appeal to the Board does not establish good cause for accepting the late-filed notice.⁵

In the absence of good cause, a late notice of appeal will be dismissed See Commandant v. Carmienke, NTSB order EM-151 (1989).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Commandant's motion to dismiss is granted,
 2. The appellant's "Motion to Permit Late Filing of Notice of Appeal" is denied, and
 3. The notice of appeal filed in Docket ME-142 is dismissed.
- KOLSTAD, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

³Although counsel concedes the notice was late, he maintains that it was due on August 9; that is, 10 days after the Commandant's decision was received at his law firm's offices on July 30.

⁴The Commandant's decision affirmed an order of an administrative law judge suspending appellant's merchant mariner's license for 6 months on a charge of negligence arising out of his pilotage of a vessel, the S/S GLACIER BAY, that allided with a submerged boulder in Cook Inlet on July 2, 1987.

⁵We find no merit in counsel's argument that the motion to dismiss should be denied because the Coast Guard took almost 30 days to file it, at which point some work on appellant's appeal brief had been done. In the first place, we do not agree that a 30 day period can fairly be termed an "unconscionable" delay and, in the second place, the timing of the Coast Guard's motion is irrelevant to any determination as to whether appellant's procedural default is excusable for good cause shown.